

Department of Veterans Affairs

§ 3.501

the last day of the calendar year in which death occurred.

(3) *Veteran receiving retirement pay.* Date of death.

(h) *Dependency of parent* (38 U.S.C. 5112; Pub. L. 90-275; §§ 3.4(a), (b)(2), 3.250, 3.551(b) and 3.660). See § 3.660.

(i) *Election of Department of Veterans Affairs benefits* (§ 3.700 series). Day preceding beginning date of award under other law.

(j) *Foreign residence* (38 U.S.C. 5308(a)). See § 3.653.

(k) *Fraud* (38 U.S.C. 6103(a), (d); §§ 3.669 and 3.901). Beginning date of award or day preceding date of fraudulent act, whichever is later.

(l) *Guardian, marriage or divorce of* (§ 3.856). Date of last payment (pending receipt of information as to change of name).

(m) *Incompetency* (§ 3.855). Date of last payment.

(n) *Marriage (or remarriage)* (38 U.S.C. 101(3), 5112 (b))—(1) *Payee (includes apportionee)*. Last day of month before marriage.

(2) *Dependent of payee (includes apportionee)*:

(i) Marriage prior to October 1, 1982: last day of the calendar year in which marriage occurred.

(ii) Marriage on or after October 1, 1982: last day of the month in which marriage occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which marriage occurred.

(3) *Conduct of surviving spouse*. Last day of month before inception of relationship.

(Authority: 38 U.S.C. 101(4), 501)

(o) *Penal institutions*. See § 3.666.

(p) *Philippines* (38 U.S.C. 107(a)(3); § 3.40). Date of last payment when recognition of service withdrawn.

(q) *Renouncement* (§ 3.106). Last day of the month in which the renouncement is received.

(r) *Service connection* (38 U.S.C. 5112(b)(6); § 3.105). Last day of month following 60 days after notice to payee. Applies to reduced evaluation, and severance of service connection.

(s) *Treasonable acts or subversive activities* (38 U.S.C. 6104 and 6105; §§ 3.902, 3.903). (1) *Treasonable acts*. Date of the

forfeiture decision or date of last payment, whichever is earlier.

(2) *Subversive activities*. Beginning date of award or day preceding date of commission of subversive activities for which convicted, whichever is later.

(t) *Whereabouts unknown* (§§ 3.158, 3.656). Date of last payment.

(u) *Change in law or Department of Veterans Affairs issue, or interpretation*. See § 3.114.

(v) *Failure to furnish evidence of continued eligibility*. See § 3.652 (a) and (b).

(w) *Failure to furnish Social Security number*. Last day of the month during which the 60 day period following the date of VA request expires.

(x) *Radiation Exposure Compensation Act of 1990* (§ 3.715). (Compensation or dependency and indemnity compensation only.) Last day of the month preceding the month in which payment under the Radiation Exposure Compensation Act of 1990 is issued.

(y) *Compensation for certain disabilities due to undiagnosed illnesses* (§§ 3.105; 3.317). Last day of the month in which the 60-day period following notice to the payee of the final rating action expires. This applies to both reduced evaluations and severance of service connection. (Authority: Pub. L. 103-446; 38 U.S.C. 501(a))

(Authority: 38 U.S.C. 8301)

CROSS REFERENCE: Failure to return questionnaire. See § 3.661(b).

[26 FR 1596, Feb. 24, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 3.500, see the List of Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 3.501 Veterans.

The effective date of discontinuance of pension or compensation to or for a veteran will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(a) *Active service pay* (38 U.S.C. 5112(b)(3); Pub. L. 87-825; § 3.700(a)). Day preceding entrance on active duty. See § 3.654.

(b) *Aid and attendance*—(1) *Section 3.552(b)(1)*. Last day of calendar month following month in which veteran is

§ 3.501

hospitalized at Department of Veterans Affairs expense.

(2) *Section 3.552(b)(2)*. Last day of calendar month following month in which veteran hospitalized at United States Government expense.

(3) *Aid and attendance for spouse*. End of month in which award action is taken if need for aid and attendance has ceased.

(c) *Disappearance of veteran*. See § 3.656.

(d) *Divorce or annulment (38 U.S.C. 5112(b)(2))*:

(1) Divorce or annulment prior to October 1, 1982: last day of the calendar year in which divorce or annulment occurred.

(2) Divorce or annulment on or after October 1, 1982: last day of the month in which divorce or annulment occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which divorce or annulment occurred.

(e) *Employability regained (38 U.S.C. 5112(b) (5), (6); Pub. L. 87-825; § 3.105)*—(1) *Pension*. Last day of month in which discontinuance is approved.

(2) *Compensation*. Last day of month following 60 days after notice to payee.

(f) *Employment questionnaire, failure to return*. Reduce award to the amount payable for the schedular evaluation shown in the current rating as of the day following the date of last payment.

(g) *Evaluation reduced (38 U.S.C. 5112(b) (5), (6); Pub. L. 87-825; § 3.105)*—(1) *Pension*. Last day of month in which reduction or discontinuance is approved.

(2) *Compensation*. Last day of month following 60 days after notice to payee.

(h) *Examination; failure to report*. See § 3.655.

(i) *Hospitalization*. (1) *Section 3.551(b)*. Last day of the sixth calendar month following admission if veteran without dependents.

(2) *Section 3.551(c)*. (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (ii) Last day of the third calendar month following admission for hospital or nursing home care if veteran without spouse or child or, though

38 CFR Ch. I (7-1-04 Edition)

married, is receiving pension at the rate provided for a veteran without dependents. (iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under § 3.551(c)(1), the last day of the month of such readmission.

(3) *Section 3.552(b)* Upon readmission to hospital care within 6 months of a period of hospital care for which pension was affected by the provisions of § 3.552(b)(1) and (2) or § 3.552(k) and discharge or release was against medical advice or was the result of disciplinary action, the day preceding the date of such readmission.

(4) *Section 3.551(d)* (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents.

(ii) Last day of the third calendar month following admission for hospitalization or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents.

(iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under § 3.551(d)(1) or (2), the last day of the month of such readmission.

(5) *Section 3.551(e)* (i) Last day of the third calendar month following admission to domiciliary or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents. (ii) Upon readmission to domiciliary or nursing home care within 6 months of a period of domiciliary or nursing home care for which pension was reduced under § 3.551(e)(1), the last day of the month of such readmission.

(6) *Section 3.551(h)*. (i) Last day of the calendar month in which Medicaid payments begin, last day of the month following 60 days after issuance of a prereduction notice required under § 3.103(b)(2), or the earliest date on which payment may be reduced without creating an overpayment, whichever date is later; or

Department of Veterans Affairs

§ 3.503

(ii) If the veteran willfully conceals information necessary to make the reduction, the last day of the month in which that willful concealment occurred.

(Authority: 38 U.S.C. 5503)

(j) *Institutional award and/or to Personal Funds of Patients* (§ 3.852). Date of last payment, when veteran is discharged from hospital, fiduciary appointed, or veteran rated competent.

(k) *Lump-sum readjustment pay*. See § 3.700(a)(2).

(l) *Retirement pay* (38 U.S.C. 5112(b)(3); Pub. L. 87-825; § 3.750). Day before effective date of retirement pay.

(m) *Temporary increase* (38 U.S.C. 5112(b)(8); § 4.29 of this chapter). Last day of month in which hospitalization or treatment terminated, whichever is earlier, where temporary increase in compensation was authorized because of hospitalization for treatment.

(n) *Section 3.853. Incompetents; estate over \$25,000*. Incompetent veteran receiving compensation, without spouse, child, or dependent parent, whose estate exceeds \$25,000: Last day of the first month in which the veteran's estate exceeds \$25,000, but not earlier than November 1, 1990.

(Authority: 38 U.S.C. 5505)

[26 FR 1596, Feb. 24, 1961, as amended at 27 FR 11889, Dec. 1, 1962; 29 FR 12368, Aug. 28, 1964; 29 FR 16329, Dec. 5, 1964; 35 FR 2828, Feb. 11, 1970; 37 FR 6679, Apr. 1, 1972; 38 FR 34115, Dec. 11, 1973; 41 FR 55874, Dec. 23, 1976; 44 FR 45941, Aug. 6, 1979; 48 FR 34473, July 29, 1983; 53 FR 23236, June 21, 1988; 56 FR 25045, June 3, 1991; 56 FR 65849, 65853, Dec. 19, 1991; 66 FR 48560, Sept. 21, 2001; 68 FR 34542, June 10, 2003]

§ 3.502 Surviving spouses.

The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a surviving spouse will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(Authority: 38 U.S.C. 501)

(a) *Additional allowance of dependency and indemnity compensation for children* (38 U.S.C. 5112(b) § 3.5(e)(3)). (1) If marriage occurred prior to October 1, 1982,

the day preceding child's 18th birthday or last day of calendar year in which child's marriage occurred (see § 3.500(n) (2) and (3)), whichever is earlier.

(2) If marriage occurred on or after October 1, 1982, the day preceding child's 18th birthday or last day of the month in which marriage occurred (see § 3.500(n) (2) and (3)) whichever is earlier.

(b) *Pay grade; dependency and indemnity compensation* (38 U.S.C. 1311(a), 5112(b)(10); Pub. L. 91-96, 83 Stat. 144). Date of last payment when rate is reduced because of new certification of pay grade.

(c) *Legal surviving spouse entitled*. Date of last payment on award to another person as surviving spouse. See § 3.657.

(Authority: 38 U.S.C. 501)

(d) *Marriage*. See § 3.500(n).

(e) *Aid and attendance* (§ 3.351(a)). (1) Date of last payment, if need for aid and attendance has ceased.

(2) If hospitalized at Department of Veterans Affairs expense as a veteran, the date specified in § 3.552(b) (1) or (3).

(f) *Medicaid-covered nursing home care* (§ 3.551(i)). (1) Last day of the calendar month in which Medicaid payments begin, last day of the month following 60 days after issuance of a prereduction notice required under § 3.103(b)(2), or the earliest date on which payment may be reduced without creating an overpayment, whichever date is later; or

(2) If the surviving spouse willfully conceals information necessary to make the reduction, the last day of the month in which that willful concealment occurred.

(Authority: 38 U.S.C. 5503)

[26 FR 1596, Feb. 24, 1961, as amended at 27 FR 11890, Dec. 1, 1962; 33 FR 2995, Feb. 15, 1968; 35 FR 2828, Feb. 11, 1970; 37 FR 6679, Apr. 1, 1972; 41 FR 55874, Dec. 23, 1976; 48 FR 34473, July 29, 1983; 53 FR 23237, June 21, 1988; 58 FR 32445, June 10, 1993]

§ 3.503 Children.

(a) The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a child, or to or for a veteran or surviving spouse on behalf of such child, will be the earliest of the dates